81-791

No. ———

Office - Supreme Court, U.S.
FILED
OCT 26 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILKES-BARRE PUBLISHING COMPANY,
a division of Capital Cities Media, Inc.,
Petitioner,

v.

NEWSPAPER GUILD OF WILKES-BARRE, LOCAL 120; THE NEWSPAPER GUILD, AFL-CIO, CLC; WILKES-BARRE PRINTING PRESSMEN'S AND ASSISTANT'S UNION, LOCAL 137; WILKES-BARRE STEREOTYPER'S AND ELECTROTYPER'S UNION, LOCAL 139; INTERNATIONAL PRINTING & GRAPHIC COMMUNICATIONS UNION, AFL-CIO; WILKES-BARRE TYPOGRAPHICAL UNION, LOCAL 187; WILKES-BARRE COUNCIL OF NEWSPAPER UNIONS, INC.; BROWN, WILLIAM M.; ORCUTT, JAMES H.; SABATINI, RICHARD V.; MAURER, JOSEPH A., JR.; WALLACE, JOHN J.; LADD, ROBERT; KAPORCH, JAMES; BOOTH, ROBERT,
Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ROBERT L. BALLOW
KING, BALLOW & LITTLE
First American Center
Nashville, Tennessee 37238
(615) 255-3452
Counsel for Cross-Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether, absent jurisdiction under § 301 of the Labor Management Relations Act over claims for tortious interference with a labor contract, such claims arising under state law may be asserted against nonparties to that contract pursuant to the federal courts' pendent party jurisdiction, in a Section 301 action involving the alleged breach of such contract.

2. Whether, absent jurisdiction under § 301 of the Labor Management Relations Act over claims for tortious interference with a labor contract, a pendent state law claim alleging tortious interference by nonparties to such a contract is preempted by federal labor law.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
STATUTORY PROVISION INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
1. The Third Circuit's holding that pendent party jurisdiction exists only with respect to defendants as to whom another independent basis of federal jurisdiction is alleged is in direct conflict with the controlling decisions of this Court, and should be reversed in the event this Court determines that tortious interference claims are not cognizable under Section 301	8
2. The Third Circuit's failure to squarely decide the preemption question, coupled with its erroneous suggestion that no pendent party jurisdiction exists, will severely prejudice the Company in the event this Court holds that tortious interference claims are not cognizable under Section 301, and justifies the exercise of this Court's supervisory power	13
CONCLUSION	16
APPENDIX	1a

TABLE OF AUTHORITIES

Cases: Page

Atkinson v. Sinclair Refining Co., 370 U.S. 238 (1962) 14
Aldinger v. Howard, 427 U.S. 1 (1976) 6, 9, 10, 11
Farmer v. United Brotherhood of Carpenters, Local 25, 430 U.S. 290 (1977) 14
Gagliardi v. Flint, 564 F.2d 112 (3d Cir. 1977), *cert. denied*, 438 U.S. 904 (1978) 9
Kerry Coal Co. v. UMW, 637 F.2d 957 (3d Cir. 1981), *cert. denied*, 50 U.S.L.W. 3245 9
Linn v. United Plant Guard Workers, Local 114, 383 U.S. 53 (1966) 14
Local 174, International Brotherhood of Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) 13
Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978) 6, 9, 10, 11
Sears, Roebuck & Co. v. San Diego District Council of Carpenters, 436 U.S. 180 (1978) 14
United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 11, 12
William E. Arnold Co. v. Carpenters District Council, 417 U.S. 12 (1974) 13

Statutes:

28 U.S.C. § 1254(1) 2
Section 301, Labor Management Relations Act, 29 U.S.C. § 185 ..... *passim*

Miscellaneous:

13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure, § 3567 (1975) 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. ———

WILKES-BARRE PUBLISHING COMPANY,
a division of Capital Cities Media, Inc.,
Petitioner,

v.

NEWSPAPER GUILD OF WILKES-BARRE, LOCAL 120; THE NEWSPAPER GUILD, AFL-CIO, CLC; WILKES-BARRE PRINTING PRESSMEN'S AND ASSISTANT'S UNION, LOCAL 137; WILKES-BARRE STEREOTYPER'S AND ELECTROTYPER'S UNION, LOCAL 139; INTERNATIONAL PRINTING & GRAPHIC COMMUNICATIONS UNION, AFL-CIO; WILKES-BARRE TYPOGRAPHICAL UNION, LOCAL 187; WILKES-BARRE COUNCIL OF NEWSPAPER UNIONS, INC.; BROWN, WILLIAM M.; ORCUTT, JAMES H.; SABATINI, RICHARD V.; MAURER, JOSEPH A., JR.; WALLACE, JOHN J.; LADD, ROBERT; KAPORCH, JAMES; BOOTH, ROBERT,
Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Cross-petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit in *Wilkes-Barre Publishing Co. v. Newspaper Guild of*

Wilkes-Barre, Local 120, et al., 647 F.2d 372 (3d Cir. 1981), the writ to issue only in the event that this Court grants the petition for writ of certiorari filed by the respondents herein in Case No. 81-594, October Term, 1981.

OPINIONS BELOW

The Third Circuit's opinion in this case is reported at 647 F.2d 372, and is reprinted (together with that court's amendments thereto) at pp. 1a-29a of the separately bound appendix filed with the petition for writ of certiorari filed in case No. 81-594 (hereinafter cited as "Pet. App. —"). The memorandum and order of the United States District Court for the Middle District of Pennsylvania are reported at 504 F. Supp. 54, and are reprinted at Pet. App. 36a-79a.

JURISDICTION

The Third Circuit's judgment and opinion in this case were entered on April 1, 1981. That court denied petitions for rehearing filed by all parties on May 11, 1981 and May 15, 1981. On August 12, 1981, Justice Brennan issued an order granting an application by respondents herein for an extension of time within which to file a petition for writ of certiorari to and including September 24, 1981. On September 24, 1981, a petition for writ of certiorari was filed by respondents and docketed as case No. 81-594.

This cross-petition for writ of certiorari is filed under the authority of Rule 19.5 of this Court. The petition for writ of certiorari in No. 81-594, in connection with which this cross-petition is filed, was received by counsel for cross-petitioner on September 26, 1981. This Court has jurisdiction to review the Third Circuit's judgment pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Cross-petitioner[1] (hereinafter "the Company"), publisher of a daily newspaper known as the *Times-Leader*, commenced this action by filing a three-count complaint in the United States District Court for the Middle District of Pennsylvania, seeking damages and declaratory and injunctive relief against the respondents herein. Count I of that complaint asserted a cause of action against respondent Newspaper Guild of Wilkes-Barre, Local 120 (hereinafter "Guild Local"), under Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185 (hereinafter "Section 301"), alleging a breach by Guild Local of the parties' collective bargaining agreement. That count alleged that certain of the Company's employees represented by Guild Local had violated a provision of the agreement by working for a daily newspaper, the *Citizens' Voice*, which directly competes with the *Times-Leader*. The provision of the collective bargaining agreement alleged to have been breached provides as follows:

> Employees of the Publisher shall be free to engage in any activities outside of working hours provided

---

[1] The listing of cross-petitioner's parent and affiliated companies required by Rule 28.1 is set forth in an Appendix hereto.

> such activities do not consist of service performed for publications in direct competition with the Publisher and provided further that, without permission, no employee shall exploit his connections with the Publisher in the course of such activities.

(Pet. App. 37a).

Count II of the complaint alleged that respondent The Newspaper Guild, AFL-CIO, CLC (hereinafter "Guild International"), the parent union of Guild Local, had likewise breached the parties' collective bargaining agreement, by reason of the conduct alleged in Count I. Alternatively, that count alleged that Guild International had tortiously induced the contract breach. Jurisdiction over the breach claim against Guild International was alleged to exist under Section 301; the district court was alleged to have jurisdiction over the tortious interference claim in Count II under Section 301, or as a pendent state law claim.

Count III of the complaint asserted a cause of action against three newspaper trade union locals representing certain other (non-Guild) employees of the Company, one international newspaper trade union affiliated with two of the local union defendants, eight individuals, and a Pennsylvania corporation, the Wilkes-Barre Council of Newspaper Unions, Inc., publisher of the *Citizens' Voice*. Count III charged that all of these defendants had tortiously induced the contract breach alleged in Counts I and II. The jurisdictional basis for Count III was alleged to be Section 301, or, alternatively, the district court's pendent jurisdiction.

All defendants moved to dismiss, urging numerous grounds. The district court dismissed all claims, including the tortious interference claims.[2] The district court

---

[2] Since no issue is presented herein with respect to the breach claims asserted against Guild Local and Guild International, neither the district court's nor the Third Circuit's analyses of those claims will be discussed.

concluded that tortious interference claims are not cognizable under Section 301. It also held that while jurisdiction over those claims was otherwise properly invoked under the doctrine of pendent party jurisdiction, the claims were barred by the doctrine of preemption.

The Company appealed the district court's decision to the Third Circuit. That court reversed the dismissal of all claims except the breach claim against Guild International; the dismissal of that claim was affirmed "without prejudice to any application the employer may make to the district court for leave to amend the pleadings." (Pet. App. 29a).[3] The Third Circuit remanded the entire case to the district court, and directed that the action be stayed pending the completion of a pending arbitration proceeding.[4] The Third Circuit expressly held that the Company's tortious interference claims were cognizable under Section 301, stating that such a claim "is one arising under federal common law over which the district court had jurisdiction." (Pet. App. 19a).

All parties filed petitions for rehearing with the Third Circuit, which were denied. (Pet. App. 30a-35a). As noted previously, on August 12, 1981, Justice Brennan extended the time within which the respondents could file a petition for writ of certiorari to and including September 24, 1981. On September 24, 1981, respondents herein filed a petition for writ of certiorari, seeking review of the Third Circuit's judgment and decision. That petition, docketed as case No. 81-594, presents the following question:

---

[3] In so doing, the Third Circuit erroneously referred to Count I of the Company's complaint. (Pet. App. 29a). As noted above, Count I was directed solely to Guild Local; the breach claim against Guild International was set forth in Count II.

[4] The Company had initiated an arbtiration of its claim for breach of the provision prohibiting work for competitors.

Whether § 301 of the Labor Management Relations Act, which provides in relevant part that "[s]uits for violation of contracts between an employer and a labor organization * * * in an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties * * *," grants the federal courts the authority to formulate and to implement a federal common law of tortious interference with a labor contract.

The Company has filed a brief in opposition to the petition in case No. 81-594.

REASONS FOR GRANTING THE WRIT

The court correctly decided the basic issue of federal statutory construction presented with respect to the Company's tortious interference claims, holding that such claims are cognizable under Section 301. However, if this Court grants certiorari and undertakes to review the Third Circuit's decision on that core issue, certain other determinations either expressed or implicit in the Third Circuit's opinion will assume a jurisdictional importance otherwise absent.

Specifically, the Third Circuit preceded its discussion of the cognizability of the Company's tortious interference claims under Section 301 with a suggestion that those claims, insofar as they were alternatively brought as pendent state law claims, could be entertained "only if the [Company's] complaint alleges some other nonfrivolous independent basis for district court jurisdiction" over the defendants below other than Guild Local. The Third Circuit cited, *inter alia*, as support for this statement this Court's decisions in *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978) and *Aldinger v. Howard*, 427 U.S. 1 (1976). In view of the Third Circuit's disposition of the case, the foregoing statement was mere surplusage and certainly did not merit this Court's review; accordingly, no petition for writ

of certiorari was filed on behalf of the Company within the alloted time for doing so. However, should the Court grant the petition in case No. 81-594 and reverse the Third Circuit's decision that tortious interference claims will lie under Section 301, the otherwise innocuous statement concerning pendent party jurisdiction would seem to preclude the Company, as the law of the case, from pursuing those claims as pendent to the breach claims against Guild Local and Guild International.

As the following discussion reveals (pp. 8-12), the Third Circuit's suggestion that pendent jurisdiction of state claims will lie only against parties as to whom an independent federal claim is asserted flatly controverts the decisions of this Court cited in its support. Therefore, if the Court determines to review the core issue presented below by granting the petition in case No. 81-594, a review of the question presented in this cross-petition is necessary to correct the plain error of the Third Circuit's determination relative to pendent party jurisdiction.

The dilemma posed for the Company with respect to the pendent party jurisdiction issue is compounded by the Third Circuit's treatment of the corollary issue of federal law preemption of the pendent state claims. The Third Circuit was squarely presented with the preemption issue; the parties seriously contested the issue in both courts below, and the district court addressed it at length. Yet the Third Circuit failed to specifically reverse or affirm the district court's holding that the Company's pendent state claims were preempted. However, occasional references to preemption appear in several parts of the opinion, from which respondents may later attempt to draw an inference that the Third Circuit sustained the district court's decision on this issue. Because the preemption question was not sufficiently treated by the Third Circuit and is a fundamental element of the

pendent party jurisdiction issue raised herein, and because the respondents will doubtless urge, consistent with their position throughout this litigation, that the Company's pendent claims are preempted, this Court should also decide the preemption issue, in the event the petition for writ of certiorari in case No. 81-594 is granted.

1. The Third Circuit's holding that pendent party jurisdiction exists only with respect to defendants as to whom another independent basis of federal jurisdiction is alleged is in direct conflict with the cotrolling decisions of this Court, and should be reversed in the event this Court determines that tortious interference claims are not cognizable under Section 301.

The bulk of the Third Circuit's discussion on the pertinent jurisdictional issues was addressed to the question of whether, and to what extent, Section 301 affords subject matter jurisdiction over the claims of tortious interference against the various defendants sued by the Company. The court concluded that the claims against all defendants[5] arose under the federal common law of labor agreements which the federal courts are obligated to formulate in applying Section 301, and, therefore, that Section 301 provided a jurisdictional foundation for the claims. (Pet. App. 8a-19a).

The Company pleaded the doctrine of pendent party jurisdiction as an alternative jurisdictional basis for the

---

[5] The Third Circuit held that the liability of the individual defendants under Section 301 would be limited to declaratory and, perhaps, injunctive relief. The court held that no injunctive relief would lie against the local and international union defendants or the Wilkes-Barre Council of Newspaper Unions, Inc., but that declaratory relief and damages could be recovered from those defendants. Since these conclusions speak solely to the extent of the various defendants' liability in the event a claim of tortious interference is deemed to be cognizable under Section 301 jurisdiction, the Company does not challenge them.

tortious interference claims.[6] (Pet. App. 36a, 45a, 49a-50a). The Third Circuit only briefly addressed the pendent party jurisdiction claims, stating as follows:

> Since the Local Guild is a party to a collective bargaining agreement and the Employer sues for an alleged violation there is no question of the court's jurisdiction over that defendant. 29 U.S.C. § 185(a); 28 U.S.C. §§ 1331, 1337. *However, none of the remaining defendants are parties to the Employer-Local Guild contract. The pendent state law claim against them can be entertained only if the complaint alleges some other nonfrivolous independent basis for district court jurisdiction over them.* See *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978); *Aldinger v. Howard*, 427 U.S. 1 (1976); *Gagliardi v. Flint*, 564 F.2d 112 (3d Cir. 1977), *cert. denied*, 438 U.S. 904 (1978). *See also Kerry Coal Co. v. UMW*, 637 F.2d 957 (3d Cir. 1981). The Employer contends that a suit for tortious interference with a labor contract is a suit for violation of such a contract within the meaning of section 301 of the Labor Management Relations Act, actionable as a matter of the federal common law of labor contracts. Thus we must decide whether such a claim is one within the subject matter of the district court.

(Pet. App. 8a-9a) (emphasis added). Although the court cited two of this Court's decisions to support the foregoing statement, the proposition is completely at odds with those cases.

In fact, the Third Circuit's apparent[7] holding in this

---

[6] At one point in its decision, the Third Circuit inadvertently characterizes Count III of the Company's complaint solely as "a pendent claim under Pennsylvania law." (Pet. App. 4a). However, the court later acknowledged the Company's alternate argument that jurisdiction existed under Section 301. (Pet. App. 8a-9a).

[7] The word "apparent" is utilized here for two reasons. First, since the Third Circuit went on to hold that tortious interference claims against nonparties to collective bargaining agreements are

regard is tantamount to a conclusion that there is no such thing as pendent *party* jurisdiction—that is, federal court jurisdiction over a pendent state law claim against a party as to whom no nonfrivolous claim cognizable under federal law is alleged. The *Kroger* and *Aldinger* cases cited in the Third Circuit's opinion recently reaffirmed that, in appropriate cases, pendent party jurisdiction does indeed exist. That the Third Circuit consciously relied on those two cases for the contrary proposition is alone sufficient grounds for this Court to issue a writ of certiorari to correct the plain error, should the Court grant certiorari in case No. 81-594 to review whether tortious interference claims do not arise under Section 301.

The gravity of the Third Circuit's erroneous holding is particularly acute in this case, for its effect is to oust claims which, absent Section 301 jurisdiction, are clearly appropriate for assertion as pendent claims, under a proper analysis of the governing principles. This Court's recent decisions in *Kroger* and *Aldinger* suggest a three-step analysis to determine whether pendent party jurisdiction should be exercised.

First, it must be determined whether constitutional power exists to hear the claim. That requirement is met if the state and federal claims "derive from a common nucleus of operative fact," such that the plaintiff "would ordinarily be expected to try them all in one proceed-

---

cognizable under Section 301, the court may have considered it unnecessary to decide the pendent party jurisdiction issue. Second, if the court intended to rule on the question, it presumably would have completed the analysis by considering the several factors to be taken into account in determining whether pendent party jurisdiction should be exercised. (See the discussion of those factors *infra*). But the court, after its brief introductory remarks (Pet. App. 8a-9a), never returned to the issue.

ing." *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). The claims in the present case clearly satisfy that test. A common element underlies each count of the Company's complaint—the breach by the Company's Guild-represented employees of the clause of the collective bargaining agreement that prohibits work for competing publications. Proof of that violation is necessary to establish liability under each of the claims asserted.

A second determination that must be made is whether "considerations of judicial economy, convenience and fairness to the litigants" justify the assertion of jurisdiction over the state claims. *Id.* at 726. Certainly, it would be unfair and unreasonable to require the Company (and other courts) to repeatedly litigate the question of whether the contract was breached, especially where, as here, the pendent party defendants have made no claim of inconvenience or unfairness.

The third factor, which has received the most attention in this Court's recent decisions, is that the nonfederal claim must be examined in light of the specific statute that confers jurisdiction over the federal claim, in order to determine whether Congress in that statute has "expressly or by implication negated the exercise of jurisdiction over the nonfederal claim." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978); *Aldinger v. Howard*, 427 U.S. 1, 18 (1976). There is nothing in the legislative history or the language of Section 301 which suggests that Congress intended to preclude the assertion of pendent claims against nonparties to the collective bargaining agreement underlying the main claim.[8] Thus, the third prong of the governing

[8] It cannot be urged that simply because the statute conferring federal jurisdiction over the main claim—here Section 301—does not expressly speak to the pendent parties, Congress must have impliedly negated pendent jurisdiction over those parties; if that is the test, it would be met in every case. *See Aldinger v. Howard*, 427 U.S. 1, 23 (1976) (Brennan, J., dissenting).

analysis also compels the conclusion that the Company's pendent tortious interference claims should be entertained in the event this Court should conclude that such claims do not arise directly under Section 301.

Additional considerations support the assertion of pendent party jurisdiction here. As one commentator has observed, the "considerations for allowing 'pendent parties' in a federal question case may well be more compelling than for doing so when the only effect is to broaden the scope—and attractiveness—of diversity jurisdiction." 13 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE, § 3567, at 462 (1975). The case for pendent jurisdiction is particularly strong when the state claim sought to be asserted is closely tied to questions of federal policy. *United Mine Workers v. Gibbs*, 383 U.S. 715, 727 (1966). It cannot be gainsaid that the issues raised by the Company's tortious interference claims are intimately related to the federal labor policy embodied in Section 301. The encouragement of meaningful collective bargaining and the preservation of the integrity of contractual rights which result from that bargaining were clearly the objectives which led to the enactment of Section 301.

Claims for tortious interference with a labor contract should be held cognizable under the federal common law formulated under Section 301, as the Third Circuit held in its decision below. If they do not lie under Section 301, however, they should nonetheless be permitted as pendent claims in federal court suits against the allegedly breaching parties. The decision below, which holds to the contrary, must be reviewed and reversed by this Court in the event that certiorari is granted in case No. 81-594.

2. The Third Circuit's failure to squarely decide the preemption question, coupled with its erroneous suggestion that no pendent party jurisdiction exists, will severely prejudice the Company in the event this Court holds that tortious interference claims are not cognizable under Section 301, and justifies the exercise of this Court's supervisory power.

Although the district court held that the Company's state law tortious interference claims were properly subsumed under the court's pendent party jurisdiction (Pet. App. 49a-52a), it held that those claims were nonetheless barred under the doctrine of preemption. (Pet. App. 52a-62a). On appeal, the Third Circuit neither affirmed nor reversed that holding by the district court.[9] Finding as it did that Section 301 affords a jurisdictional basis for claims of tortious interference, the Third Circuit ordinarily would have been justified in not deciding the preemption issue; once a claim is recognized as arising under Section 301, no state law preemption problem is presented. *William E. Arnold Co. v. Carpenters District Council*, 417 U.S. 12, 16 (1974); *Local 174, International Brotherhood of Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101 n.9 (1962).

However, the Third Circuit made the preemption issue relevant when it addressed the pendent party jurisdiction question. Taken together, the court's conclusory rejection or misinterpretation of pendent party jurisdiction, and its summary treatment of the preemption ques-

---

[9] The Third Circuit's only reference to the district court's decision on the preemption question appears at Pet. App. 20a, where the appellate court expressed disapproval of the lower court's holding that both state law and federal common law remedies were foreclosed, "leaving the [Company] wholly unprotected from tortious interference." The Third Circuit here was restating its position that the action for tortious interference claims properly lies under Section 301, and did not speak to whether state law would be preempted if jurisdiction were not deemed to exist under Section 301.

tion decided by the district court, work to severely prejudice the Company if this Court grants certiorari in case No. 81-594 and reverses the Third Circuit's conclusion that tortious interference claims arise under Section 301. Under such circumstances, even if this Court grants certiorari on this cross-petition and corrects the Third Circuit's clearly erroneous statement with respect to pendent party jurisdiction, the Company still faces dismissal of its pendent claims since the district court's holding that the claims were preempted was not disturbed. This danger is compounded by the Third Circuit's indiscriminate reference to "preemption" in numerous places throughout the opinion, even though it was not, in fact, analyzing the preemption issue.[10]

Certainly a conclusive preemption determination of such considerable import should not be summarily rendered, if indeed that is the upshot of the Third Circuit's opinion. Substantial authority exists for the proposition that state law claims alleging tortious conduct are not preempted by the National Labor Relations Act. *See Sears, Roebuck & Co. v. San Diego District Council of Carpenters*, 436 U.S. 180 (1978); *Farmer v. United Brotherhood of Carpenters, Local 25*, 430 U.S. 290 (1977); *Linn v. United Plant Guard Workers, Local 114*, 383 U.S. 53 (1966). These cases teach that careful examination of the particular conduct at issue, together with the surrounding circumstances, the status of the

---

[10] Thus, the Third Circuit's discussion of the extent and nature of the Section 301 liability of the individual respondents is interspersed with unfortunate references to preemption. (Pet. App. 9a-13a). However, the court's analysis, and the case upon which it is predominantly based, *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), have nothing to do with the preemption doctrine. The court was merely discussing to what extent Section 301(b) limits the exposure of the individual respondents to damage claims, assuming Section 301 provides a jurisdictional basis for the tortious interference claims. *See also* footnote 9, *supra*.

parties,[11] and their underlying motivations, is essential to a proper analysis of preemption problems. No such analysis was undertaken by the Third Circuit.

If claims of tortious interference with a labor contract are deemed not to arise under the federal common law formulated under Section 301, a compelling case is made for recognizing the continuing viability of such causes of action under state law. Independent of Section 301, the federal statutory scheme of labor relations does not encompass or envision a claim of tortious interference; such a claim is nowhere relegated to the jurisdiction of the National Labor Relations Board. The common law doctrine of tortious interference serves an important purpose which parallels the policy underlying this legislation. It cannot be seriously argued that the deliberate inducement or facilitation of a breach of a labor contract is conduct that Congress intended to place beyond regulation by any judicial or administrative body. If *any* overriding federal law exists with respect to claims of tortious interference with a labor contract, it must be the federal common law under Section 301. However, should this Court determine that such claims are not subsumed under Section 301, they properly should be left to be determined under state law principles.

When the Third Circuit decided the pendent party jurisdiction question, it should have squarely addressed all issues comprehended therein. The Company has been denied the decision it was entitled to expect on the preemption question. Such incomplete adjudication justifies the exercise of this Court's supervisory power through

---

[11] This factor has particular importance here with respect to respondent Wilkes-Barre Council of Newspaper Unions, Inc., the corporate publisher of the *Citizens' Voice*. This commercial entity certainly cannot avail itself of the preemptive shield of the federal labor policy.

the issuance of a writ of certiorari. Accordingly, if certiorari is granted in case No. 81-594, this Court should undertake to review the whole case—including the preemption inquiry so lightly treated by the court below—in order to avoid manifest prejudice to the Company.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Third Circuit in the event certiorari is granted in case No. 81-594.

Respectfully submitted,

ROBERT L. BALLOW
KING, BALLOW & LITTLE
First American Center
Nashville, Tennessee 37238
(615) 255-3452
Counsel for Cross-Petitioner

APPENDIX

The instant suit was filed by Wilkes-Barre Publishing Company, which was at that time a Pennsylvania corporation and a wholly-owned subsidiary of Capital Cities Communications, Inc., of New York. Wilkes-Barre Publishing Company is now an unincorporated division of Capital Cities Media, Inc., which is a wholly-owned subsidiary of Capital Cities Communications, Inc. Other operating divisions of Capital Cities Media, Inc. include Fairchild Publications, the Arlington (Tex.) *Citizen-Journal*, and the Belleville (Ill.) *News-Democrat;* Capital Cities Vision, Inc. is a wholly-owned subsidiary of Capital Cities Media, Inc.

The following enterprises are operating divisions of Capital Cities Communications, Inc.: WPVI-TV, Philadelphia; WKBW-TV, Buffalo; KTRK-TV, Houston; WTNH-TV, New Haven; WTVD-TV, Durham-Raleigh; KFSN-TV, Fresno; WPAT AM-FM, Paterson, N.J.; KZLA AM-FM, Los Angeles; WJR AM-FM, Detroit; WBAP AM and KSCS FM, Fort Worth; WKBW AM, Buffalo; WPRO AM-FM, Providence; WROW AM-FM, Albany; Fort Worth (Tex.) *Star-Telegram; Albany Democrat-Herald*, Albany, Ore.; *Daily Tidings*, Ashland, Ore.; *Gresham Outlook*, Gresham, Ore.; *Springfield News*, Springfield, Ore.; *Cottage Grove Sentinel*, Cottage Grove, Ore.; *Lebanon Express*, Lebanon, Ore.; *Sandy Post*, Sandy Ore.; *Stamp Collector* magazine; *Stamp Wholesaler* magazine.

The following companies are subsidiary corporations of Capital Cities Communications, Inc.; where a subsidiary is itself a parent corporation, the name of its subsidiaries are noted parenthetically: Oakland Press Co., Pontiac, Mich.; The Kansas City Star Company, Kansas City, Mo.; Capital Cities of Kansas, Inc. (parent of Pennypower Shopping News, Inc.); Capital Cities of Illinois, Inc. (parent of Professional Press, Inc.); Capital

Cities of Connecticut, Inc. (parent of Shore Line Newspapers, Inc.); Capital Cities Properties, Inc.; Capital Cities Cable, Inc.; Capital Cities Cable of Alburquerque, Inc. (parent of Sandoval County Cable Television, Inc.); Capital Cities Cable of Ohio, Inc. (parent of Marks Cablevision of Green, Inc.); Capital Cities Cable of Indiana, Inc. (parent of Satellite Cablevision, Inc.); Coastal Bend Cablevision Corp.; Clear Cablevision, Inc.; Omnicon Cablevision of Illinois, Inc.; Omnicon of Michigan, Inc.; Capital Cities Peninsular Cable, Inc.; Capital Cities Cable of Delaware, Inc. (parent of Cablecom-General, Inc.; Cablecom-General, Inc. is the parent of Cablecom-General of Modesto, Inc., Total Television of Santa Rosa, Inc., Triangle Cable Company, Multi-Channels, Inc., Sooland Cablecom Corp., Cablecom of Kirksville, Inc., Cablecom of Fargo, Inc., Video Independent Theatres, Inc. [parent of Tele Hi Fi, Inc. and Lindsay Theatres, Inc.], Cablecom General of Dyersburg, Inc., Vu More Company of Lufkin, Inc., Mid-Kansas, Inc., Trenton Cable TV, Inc., Cablecom General of Altus, Inc.).